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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/620,009	07/15/2003	Richard A. Davis	M09663	8602
7590	06/03/2004		EXAMINER	
William D. Lanyi, Esq. Mercury Marine W6250 Pioneer Road P.O. Box 1939 Fond du Lac, WI 54936-1939				AVILA, STEPHEN P
		ART UNIT	PAPER NUMBER	3617
DATE MAILED: 06/03/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/620,009	DAVIS ET AL.
	Examiner	Art Unit
	Stephen Avila	3617

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 15 July 2003.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-5 and 7-20 is/are rejected.
- 7) Claim(s) 6 is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
 Paper No(s)/Mail Date 071503.
- 4) Interview Summary (PTO-413)
 Paper No(s)/Mail Date _____.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: _____.

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-4, 8, 9, 12, 14, and 15 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Claussen (cited by Applicant). Claussen discloses the claimed structure including a cooling system for a marine propulsion device with a conduit 56 having an inlet end 66 under a cavitation plate 62 and above a propeller 16, a return passage 45 and a removable cover 18.

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 5, 10, 11 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Claussen in view of Byrd. Claussen does not disclose bevel gears and a housing cover above the gears. Byrd teaches bevel gears 1, 17 with a cover above the gears. It would have been obvious to a person of ordinary skill in the art at the time the invention was made to form the device of Claussen with bevel gears and to from the cover above the gears as taught by Byrd for improved drive efficiency.

5. Claims 7, 13 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Claussen in view of Brodbeck et al (cited by Applicant). Claussen does not

Art Unit: 3617

disclose the water being directed forwardly onto a top surface and the pickup being part of a trim device. Brodbeck et al teach a stream of water 126 being directed forwardly onto a top surface of the drive (note Figure 1, for example) and a pickup being part of trim device (note Figures 4 and 5, for example). It would have been obvious to a person of ordinary skill in the art at the time the invention was made to form the device of Claussen with the water stream being directed forwardly onto a top surface and to use the pickup as part of a trim device as taught by Brodbeck et al to maximize the removal of excess heat.

6. Claims 17, 18 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Claussen in view of Brodbeck et al, as applied to claims 7, 13, and 19 above, and further in view of Byrd. Claussen does not disclose bevel gears and a housing cover above the gears. Byrd teaches bevel gears 1, 17 with a cover above the gears. It would have been obvious to a person of ordinary skill in the art at the time the invention was made to form the device of Claussen with bevel gears and to from the cover above the gears as taught by Byrd for improved drive efficiency.

7. Claim 6 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen Avila whose telephone number is 703-308-2578. The examiner can normally be reached on Monday to Thursday from 8 AM to 4 PM (EST).

Art Unit: 3617

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Samuel J. Morano can be reached on 703-308-0230. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Stephen Avila
Primary Examiner
Art Unit 3617

